

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EVENTBRITE, INC.,  
Plaintiff,  
v.

M.R.G. CONCERTS LTD. and MATTHEW  
GIBBONS,  
Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 20-4040-SI

**FINAL PRETRIAL ORDER**

On April 19, 2022, the Court held a final pretrial conference in the above captioned matter, which is set for jury trial beginning May 2, 2022, with jury selection on April 21, 2022. All parties were represented by counsel. The following matters were resolved:

**1. Witnesses:** Witnesses, excepting party representatives, are excluded from the courtroom until after they have testified. The parties have agreed that witness Matthew Gibbons will be called to testify and complete his testimony on May 2, 2022, in order that he may attend to other business thereafter. Witness Samuel Cohen has, according to his physician, suffered the onset of a serious medical condition which will prevent his live testimony at trial. The Court finds that Mr. Cohen is unavailable to testify as a witness, and the parties may designate portions of his deposition to be used as his testimony.

**2. Trial exhibits:** No later than 2 p.m. on Friday, April 29, 2022, the parties shall submit their trial exhibits, in binders with numbered tabs separating each exhibit, and including a descriptive

index at the beginning of each binder. The Court shall be provided with two sets (the originals for the file and one set for the Court). The parties shall also prepare one set for opposing counsel, in addition to their own set. Any exhibit previously designated confidential which is admitted into evidence will be admitted in the public record, with redactions if necessary.

**3. Timing of trial:** The parties estimate that the trial should take 4-5 days to complete. The jury will be selected beginning 9:00 am on Thursday, April 21, 2022. The trial will begin with opening statements on Monday, May 2, 2022, at 9:00 am. The Court will set the matter for a 5 day trial, as follows: each side shall have up to 30 minutes to present opening statements; each side shall have 10 hours total for presentation of evidence, which includes direct and cross-examination and presentation of all exhibits; and each side shall have up to 1 hour for closing argument.

**4. Selection of jurors:** There shall be a jury of 7 people, all of whom are fully vaccinated and boosted.. Each side shall have up to 3 peremptory challenges. No later than 4 pm on Wednesday, April 20, 2022, the parties shall submit a jointly-approved neutral statement of the case which can be read to the jury prior to voir dire. In addition to the completed questionnaires, which counsel already have, the Court will conduct in-person voir dire, and each side may have up to 15 minutes to conduct its own voir dire.

**5. Trial schedule:** Trial days will run from 9:00 a.m. until 4:00 p.m., with a 15 minute morning and afternoon break and a 45 minute break for lunch.

**6. Motions in limine:** The parties filed ten motions in limine. Docket Nos. Nos. 120-128 and 153. After consideration of the arguments made in the briefs and at the pretrial conference, the Court rules as follows:

**Eventbrite Motions**

MIL No. 1: To exclude testimony of MRG employee Shea Dahl re March 12, 2020 phone call

with Eventbrite employee Mitch Forster; **DENY**, provided MRG lays the appropriate foundation as to Mr. Forster's job status and duties.

MIL No. 2: To exclude testimony re MRG's damages; **DENY**, provided that MRG does not rely on any evidence not previously produced to Eventbrite.

MIL No. 3: To exclude references to Delaware factors in determining MAC clauses; **DENY**. Neither party may introduce or argue Delaware law, but factual matters which may coincide with factors relevant under Delaware law are not on that account inadmissible.

MIL No. 4: To exclude testimony conflating advance payouts and replenishing advances; **GRANT**. Evidence or argument actually conflating APOs and RAs may be objected to and will be excluded; but general information regarding APOs is not inadmissible.

MIL No. 5: To exclude March 26, 2020 GChat exchange between Eventbrite employees; **DENY**. The parties may wish to redact irrelevant portions at the beginning and the end.

MIL No. 6: To exclude testimony re subjective understanding of contracts; **DENY** as overbroad without prejudice to specific questions at time of trial.

MIL No. 7: To exclude testimony re Eventbrite adverse events after April 21, 2020; **GRANT**.

### **MRG Motions**

MIL No. 1: Exclude testimony re MRG adverse events after April 7, 2020; **GRANT-IN-PART** – exclude evidence of events after April 21, 2020.

MIL No. 2: Exclude testimony re Eventbrite's "objective reasonableness" theory; **DEFERRED** pending further briefing.

MIL No. 3: To exclude testimony re: Eventbrite damages; **DENY** provided that Eventbrite does not rely on any evidence not previously produced to MRG.

**7. Other Matters:** All counsel and trial team members, parties and party representatives, and members of the public are required to be fully vaccinated, including a booster shot if eligible. All individuals will be required to wear a mask in the courtroom. Fully vaccinated witnesses on the witness stand may take off their masks, and counsel questioning the witness may do so also. All efforts should be made to social distance.

**IT IS SO ORDERED.**

Dated: April 20, 2022



SUSAN ILLSTON  
United States District Judge